



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: OPR-DR, MNR-DR, FFL**
 TT: CNR

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant filed three separate applications, each seeking:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

At the outset of the hearing the landlord requested to amend the monetary amount of their claim as additional rent has come due and owing since the date of filing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent

coming due is reasonably foreseeable, I amend the landlord's application to increase their claim to \$5,900.00.

The tenant confirmed receipt of the landlord's application and evidence. Based on the undisputed evidence I find the tenant duly served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notices be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this tenancy is \$2,950.00 payable on the first of each month. A security deposit of \$1,375.00 and pet damage deposit of \$1,375.00 were collected at the start of the tenancy and are held by the landlord. The tenant failed to pay rent as required on September 1, 2021 and the landlord issued a 10 Day Notice dated September 24, 2021 showing an arrear of \$1,950.00. The tenant confirmed receipt of the 10 Day Notice and filed an application for dispute resolution on September 29, 2021.

The tenant was subsequently served with 10 Day Notices dated November 2, 2021 and December 2, 2021 and filed applications to dispute each of those notices on November 8, 2021 and December 8, 2021.

The tenant claimed that they had served the landlord with each of their applications by email but did not provide any documentary evidence to support their claim nor did they provide any details such as the dates when they emailed the landlord. The landlord disputes that they have been served with any materials from the tenant.

The parties agree that the tenant has made some payments to the landlord and that the total arrear as of February 11, 2022, the date of the hearing is \$5,900.00. The parties

agree that the landlord clearly indicated that any payments from the tenant were for use and occupancy only and did not reinstate the tenancy.

Analysis

Section 59(3) of the *Act* and Rule 3.1 of the Rules of Procedure establishes that a person who makes an application for dispute resolution must give a copy of the application to the other party.

The tenant claims they served the landlord with each of their applications but provided little evidence in support of their claim. They submitted no documentary evidence to support that they have emailed the landlord as stated nor were they able to give the dates on which they emailed.

Based on the paucity of evidence I am not satisfied, on a balance of probabilities, that the landlord has been served with the tenant's applications or materials in accordance with the *Act* or at all. Accordingly, I dismiss the tenant's applications as I am not satisfied that the landlord was served with any of the tenant's applications for dispute resolution.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's applications, and I find that the landlord's 10 Day Notices each complies with the form and content requirements of section 52. They are all signed and dated by the landlord, provide the address of the rental unit, the effective dates of the notices, and the grounds for the tenancy to end. I am satisfied, based on the undisputed testimony of the parties, that the tenant is required to pay rent in the amount of \$2,950.00 on the first of each month and failed to do so in September, November and December giving rise to the issuance of the notices.

I accept the evidence of the parties that any payments accepted by the landlord have been clearly stated to be for use and occupancy only and did not reinstate the tenancy.

Accordingly, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective dates for all of the 10 Day Notices has passed, I issue an Order enforceable 2 days after service on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed testimony of the parties I find the tenant was obligated to pay rent in the amount of \$2,950.00 on the first of each month. I accept the evidence of the parties that the tenant has failed to pay rent as required and there is presently an arrear of \$5,900.00. Therefore, I issue a monetary award in that amount in the landlord's favour.

As the landlord was successful in their application, they are also entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$3,250.00, allowing for recovery of the unpaid rent and filing fee and to retain the deposits for the tenancy. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 11, 2022

Residential Tenancy Branch